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## **'Truly' International Refugee Law? Or Yet Another East/West Divide?**

**Sara Davies**

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*"Truth are illusions about which one has forgotten that this is what they are"*

F. Nietzsche (cited in Said, 1978, p.203)

In the recent literature on international refugee law (Martin, 1997; Goodwin-Gill, 1996; Kourula, 1999) there is a predominant assumption that it is indeed *international*. However, it is clear that the main possibilities of refugee law come from *state* adherence and obligation to it. The will of the Western states to practice international refugee law has been questioned in the last two decades (Feller, 2001; Loescher, 1993; Chowdhury 2001; Chimni, 1998), but very little has been written about the role of Asian and developing states in international refugee law. In this paper, I present a brief history of the formation of international refugee law. I argue that 'East' and 'West' (Said, 1978) have taken up very different positions in relation to refugees, and that this has significant implications in the present day. The possibilities of international refugee law are limited by an East/West divide.

### **International Refugee Law After World War I - Protection**

The first time that refugees were conceptualised as being a shared state responsibility was after World War I. Before this, the treatment and status of refugees was determined by individual states, and the state response to refugees was thus guided by the principle and problems of the state. With the establishment of the High Commissioner for Refugees in 1920, under the auspices of the League of Nations (LON), the emphasis was for a collective response to *protect* the stateless. The High Commissioner for Refugees did not have the administrative capability, or the permission of the League of Nations to set up an administration which could individually assess refugee claims; therefore the High Commissioner was only to assist groups of refugees recognised by the members of the LON as deserving such status and assistance. The first High Commissioner for Refugees, Fridtjof Nansen, was successful in facilitating state recognition and protection for the plight of refugee groups seeking asylum (Loescher, 1993, p.37). Though recognition was only provided to certain groups of refugees, initially only Russians and Armenians, Nansen is credited with being the first to persuade

European states that refugees were an international responsibility (Loescher, 1993, p. 37).

The refugee problem after World War I was a decidedly European one and therefore, not surprisingly, the 'international protection' achieved was predominantly in and from Europe. This is highlighted by the fact that those first recognised by the High Commissioner as refugees were only from Europe. This meant that the initial definition of a refugee and 'international' refugee law was very limited.

However, the refusal to adopt a universal definition of the term refugee, argues Loescher, stemmed from "fear of opening the door to international recognition of political dissidents" (1993, p.40). States were concerned about the domestic dangers of harbouring political dissidents. This did not bode well for the future development of legal status relating to the recognition of refugees.

### **International Refugee Law After World War II - Defining the legal status of a refugee**

After World War II, a significant refugee problem existed in Europe and elsewhere; over 40 million people were estimated to be displaced in Europe alone (UN, *Refugees*, 2000, p.13). Overseas, millions of Chinese people who had been displaced during the Japanese occupation of China were seeking asylum outside China and by 1947, the borders of newly created India and Pakistan had led to the exodus of nearly 14 million (Muntarbhorn, 1992, p.4). Before the formal establishment of the United Nations in June 1945, the need to address the overwhelming refugee crisis led to the establishment of the United Nations Relief and Rehabilitation Administration (UNRRA) by the Western states in 1943. However, the long-term durability of the UNRRA was limited, as it was solely created for humanitarian responses to those displaced by World War II. The International Relief Organisation (IRO) was then created under the United Nations auspices in 1945. The temporary nature of the IRO made it unable to effectively administer the increasingly large number of the displaced in Europe (UN, *Refugees*, 2001, p.17). In

addition, legal protection for those who did not have the protection of their country of origin was causing administrative and political difficulties. In 1949 the IRO started to phase out its programs and in 1952 it officially closed down.

In the late 1940s debate began within the United Nations about the creation of a new and permanent refugee body. What was most apparent in these debates was that states wanted 'the maximum guarantee that their legitimate interests would be safeguarded' (Holborn, 1954, p.28). Additionally, states had different ideas about what was required. The United States supported the idea of a temporary refugee organisation, like the IRO, whereas Europe favoured a stronger, multipurpose refugee agency with a High Commissioner who had the power to raise and dispose funds.

The result was a compromise. In December 1949, the United Nations General Assembly decided by thirty-six votes to five, with eleven abstentions to establish the Office of the United Nations High Commissioner for Refugees (UNHCR), which from 1 January 1951 would have an initial mandate for three years. The UNHCR was a subsidiary organ of the General Assembly under Article 22 of the UN Charter and from the beginning its scope and authority was severely limited. This was "principally the result of the desire of the United States and its Western allies to create an international refugee agency that would neither pose any threat to the national sovereignty of the Western powers nor impose any new financial obligations on them" (Loescher, 1988 in UN, *Refugees*, 2001, p.19).

### **1951 Convention – International or Regional Protection?**

In 1951 the UN also moved to establish an international agreement for defining, processing and resettling refugees – the 1951 Convention Relating to the Status of Refugees (hereafter called 1951 Convention). The draft resolution (A/C.3/L.142), which became this Convention, was passed by the United Nations General Assembly by 26 votes to 5, with 12 abstentions (UN. *Official Records*, 1950, p.454). Details of the Convention were then resolved at a conference in Geneva in July 1951.

The Conference decided that the Convention would include a 'narrow' definition of the term 'refugee', which must be presented on an individual basis. In brief, a refugee was to be any person who had been considered a refugee by the League of Nations, the UNRRA or IRO; in addition a refugee was any person who had, as a result of events occurring before 1 January 1951:

Well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

(*UNHCR 1951 Convention Relating to the Status of Refugees*, 1951, p.16).

The Convention then, applied only to individuals (not groups) and included significant time and geographic constraints.

The pre-1951 constraint on the definition of a refugee became a concern in the 1960s when stateless populations appeared in Korea, China and Africa. But even before this, during of the Convention and Statute of the UNHCR, this time constraint was viewed by some states with disbelief. They knew that the refugee population would not cease in 1951. The 'narrow' definition of 'refugee' was also a topic of intense debates in 1949 and 1950. States such as India, Pakistan, Iran and China argued that the 'narrowness' of the refugee definition meant their refugee populations would not be considered as refugees under the Convention (*UN Official Records*, 1950: 324<sup>th</sup> – 344<sup>th</sup> Meeting). What did this make the stateless populations residing within their states?

The definition of a refugee in the Convention originates from the Huguenot experience in the late 17<sup>th</sup> century. However, it was not until after the French Revolution that the concept of asylum was linked with political persecution to create the present notion of 'refugee'. After the French Revolution, it became 'noble' for 'both sides' – the aristocratic and revolutionary states – to offer asylum to those who were considered 'victims' of this political upheaval (Marrus, 1984, p.15). Naturally, the aristocrats fleeing France were granted asylum in Britain. The revolutionary forces elsewhere in Europe, for instance Poland, sought refuge in France. The fact that this was also a time when labour was essential for all states embracing industrialisation no doubt made this link more advantageous and well accepted (Marrus, 1984). What this very brief history of refugee discourse demonstrates is that the origins of modern refugee law were motivated by Western concerns.

This is further illustrated by the fact that the Islamic version of refugee, or *muhajir*, is nowhere apparent in the current concept of refugee in international law. According to Suhrke (1995), the Islamic religion interprets flight as a sacred duty to be undertaken by Muslims within a non-Muslim state. This is because as

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a Muslim, one cannot have a Muslim society in a non-Muslim state; as state and society are indivisible, Muslims must leave non-Muslim states. *Hijra* (to leave a place to seek sanctuary; freedom from persecution; freedom of religion or any other purpose, such as to leave a bad way of life for a good or more righteous way) in these circumstances is the primary motivation. It is above the 'persecution', or voluntary/involuntary movements that the West places emphasis upon in defining refugees. The first civil refugee code in the Muslim world – Law of 1857 – made no distinction between migrants and refugees. The term *muharrir*, equivalent to Arabic *muhajir*, was used to include all subjects who wished to leave their former state. Non-Muslims were also welcomed to Muslim states, with examples of the Jewish migration from Spain to North Africa and the Middle East in the late fifteenth to early sixteenth century.

### 1967 Protocol – Expanding the International?

In 1967 a Protocol was developed as an addendum to the 1951 Convention. This occurred after the 1965 Bellagio conference debated the relevance of the 1951 Convention, and a number of developed and developing states argued that the 1951 Convention's time and geographical constraint needed to be removed. The 1967 Protocol stated that as new refugee situations had arisen since the Convention, it was "desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951" (1967 Protocol Relating to the Status of Refugees, p.48). The 1967 Protocol further stated that it would be applied by states without any geographic limitation, with the exception of states that chose to uphold this limitation based upon their decision under the Convention.

The drafting of the 1967 Protocol Relating to the Status of Refugees was a process that included both developed and developing states. However, there was a new emphasis on the benefit this would have for developing states.<sup>1</sup> The majority of the drafting process for the 1967 Protocol occurred in the Executive Committee of the UNHCR, with Iran and China the only representatives of Asian interests present. Other developing countries present were Brazil, Colombia, Lebanon, Madagascar, Nigeria, Tunisia, Turkey, United Republic of Tanzania and Venezuela, as opposed to eighteen developed, Western countries. The Protocol was said to be of benefit for the developing states, as they would now receive UNHCR's legal protection for their refugee population. However, some significant concerns raised by developing states at the Bellagio

Conference were not addressed in the Executive Committee, and were not therefore included in the Protocol. The largest concerns, were the still too limited definition of the term 'refugee' in the 1951 Convention, and the increased financial obligations on developing countries with the expansion of the Convention, also, the fear that the West would force Third World countries to accept 'politically undesirable' refugees (UN. *Official Records*, 1965 Supplement No. 11A).

### Experiences of Asia with International Refugee Law

From this consideration of twentieth century refugee law, it is visible that the definition of 'refugee' shifted from the earlier period of *protection* under the League of Nations to an *individual* approach under the 1951 Convention. The individual approach was developed to promote the political objectives of the West as individual stories of persecution highlighted the plight of refugees from states that the West was in ideological 'combat' with. Admission based on individual cases also reduced the likelihood of group admission, which would have resulted in a high influx of refugees to Western states (Loescher, 1988). The presumption of refugee status was based on fear of political persecution only and did not include other concerns such as a lack of subsistence due to constant conflict, or natural disasters leading to flight (Schmeidl, 2001). This meant that the definition of a refugee in international law became narrower and increasingly distanced from the experiences of stateless people in the Third World. In Asia, Africa and South Africa refugees fled political persecution but also ethnic conflicts, man-made environmental disasters, natural disasters, failed (Western inspired) development projects, coups, civil and interstate conflicts over borders.

One result today is the ongoing debate about what a 'true' refugee is. As my history indicates, particular regions have shaped the evolution of the term refugee rather than genuine global dialogue and consensus about the political, social and economic factors that create refugee flows. Currently, international refugee law is a discourse that the West dominates, framing knowledge claims about what a 'true refugee is'. The West has excluded Asian and developing countries from the formation of refugee law.<sup>2</sup> This in turn, has enabled Asia to remain detached from the responsibility to contribute an alternative discourse of 'refugeeness.' To date only five Asian states have signed the 1951 Convention or the 1967 Protocol – Cambodia, China, Japan, the Philippines and Republic of Korea. It should be noted

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that all these countries have signed only since 1980.<sup>3</sup> In the literature there are two main reasons provided to explain why Asia has not participated in the formation of 'international refugee law'. First, there is the argument that as a new nation-state region, Asia is yet to 'catch up' to Western state-practices. Therefore, the lack of migrant and refugee policies in Asia is not because of a rejection of Western policies, but because of its recent introduction to border practices of the nation-state (Castles, 2001; Weiner, 1993). This argument neglects the very recent experience of the West in nation-state formation and border control. Western states started to develop the migration and refugee laws only in the twentieth century.

The emphasis upon Asian states to eventually develop into the 'ideal type' – the Western nation-state (Castles, 2001, p.180) fails to account for the long history Asia had, perhaps of its own 'ideal type' of state. The notion that borders, citizenship and passports was something new to Asia and not to Europe and that this arrival of 'inclusion' and 'exclusion' in state practices occurred at very different times for Asia (modern) and Europe (old) – is inaccurate. It was in the early twentieth century that passports and borders came to exist with the same sovereign status in Europe as today. In fact, Marrus argues that the use of borders and passports to exclude 'unwanted' populations was not implemented until the approaching end of World War I. Therefore, in the same century, Europe and Asia have actually both experienced the creation and existence of laws regarding migration and refugee status.

Evidence of early migration policy development exists in China from at least the fifth millennium B.C (Lee, 1979). From this point, migration policy definitely played a role in the expansion of the Sinitic world. Almost all migrations mentioned in early Chinese historical sources were government sponsored and linked to border control, hence the need for paper documentation or 'passports' to validate people's movement. From second B.C to seventh A.D, planned migration was a fixed constant and even predominant feature of the Chinese population movement. The continuous use of migration as a policy tool, led the Chinese government to develop a 'vast body of techniques for planning and financing population movements and solving settlement problems' (Lee, 1979, p.22). Thus the idea that Europe was the 'pioneer' in migration laws is inaccurate, as is the idea that Asia simply needs to 'catch up' to the West in adopting international refugee law.

The second argument used to explain Asia's 'lack' of participation in the formation of international refugee

law is that Asia is new to 'refugee' experiences. Unlike the Western refugee problem (that is, related to individual political persecution), the nature of people flows in developing countries is often completely different. In their discussion of refugees in Asia, for example, Connolly and Kennedy (1994) often cross-references asylum seekers as 'illegal migrants'. This indicates a

lack of conceptual clarity about precisely 'who' and why people are leaving developing countries; this leads to conjecture about the 'motivations' of these asylum seekers. But, as suggested above, Third World populations are not always seeking sanctuary from government persecution. Rather, their flight is related to a general fear for life due to generalised violence, malnutrition, lack of adequate resources, or to advance their economic situation. While these situations are of a genuine humanitarian concern, they are not threats that warrant legal protection by the UNHCR

or host state. This has led to the argument that mass people flows, the majority of which seek asylum in developing countries bordering unstable countries, do not constitute 'refugee flows'. Thus, these people are often designated 'economic migrants' or threats to security (Connolly and Kennedy, 1994; Weiner 1992, 1993).

### **The Indochinese Experience and International Refugee Law**

In the 1970s, a massive movement of Indochinese refugees began in Asia as many Southern Vietnamese fled Vietnam in the wake of the Communist victory. In Cambodia, refugees fled for a number of reasons – the genocide under Pol Pot, then the Vietnam invasion and subsequent civil war. Finally, the communist revolution in Laos also led many to leave. However, at this time, no Asian state had signed either the 1951 Convention or 1967 Protocol.

The first response by the Asian region was to request that the international community take major responsibility for the refugees, with the proviso that, although international standards would be used to process asylum seekers, the determination of how this would proceed would still be controlled by the Asian states (Muntarbhorn, 1992, p.50). In 1979 and again in 1989, new international agreements were made about the management of Indochinese refugees.

The 1979 Plan of Action was developed to provide temporary 'first' asylum in Asia to those seeking refugee status. During first asylum, the UNHCR would process claims and determine who should be sent as refugees to 'settler' states such as United States of America, Canada and Australia. The West had agreed

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to take a large proportion of those seeking asylum after they were processed by the UNHCR under the 1951 Convention and 1967 Protocol. In addition, the Orderly Departure Program (ODP) was set up by the UNHCR in Vietnam, to facilitate select emigration from Vietnam.

The limitations of the 1979 Plan became obvious when the political will of 'first recipients' states in Asia and 'final destination states' in the West, increasingly wore thin. By 1981, the main resettlement countries were reducing their intake quotas for refugees. At the same time, first asylum countries such as Singapore, Malaysia, Thailand, Indonesia and the Philippines were progressively instituting 'human deterrence measures' including measures consisted of prolonged existence in refugee camps and less access to UNHCR refugee processing (Zolberg, Suhrke and Aguayo, 1989, p.164). This was a concern particularly as the numbers of those languishing in refugee camps and detentions centres continued to rise in the mid 1980s. In fact, a sharp upturn of outflows from the Indochina region in 1986 effectively ended the 1979 Plan. Boat people were literally turned away from the shores of Asian states and denied any asylum.

This led in July 1988, to a call by ASEAN (Association of South-East Asian Nations) for an international conference on the Indochinese problem. A draft Declaration and Comprehensive Plan of Action (CPA) were drawn up by consensus at a Preparatory Meeting convened by the Government of Malaysia, in Kuala Lumpur in March 1989. The CPA was then endorsed by an International Conference on Indo-Chinese Refugees in July 1989 and the UNHCR.

In the CPA, Vietnam was again requested to try to prevent the mass populations leaving via boats and people smugglers; the UNHCR was to set up a permanent office in Vietnam to process requests for orderly departures. In addition, UNHCR processing centres were to be permanently established in Indonesia and the Philippines. Once again, temporary asylum was to be provided by Southeast Asian states; from there individuals were to be sent to Western states as refugees or repatriated to Vietnam if their asylum plea was determined to be invalid. The majority of Asian states still refused to sign either the 1951 Convention or the 1967 Protocol; they also refused to accept any permanent settlement of asylum seekers within their states.

The CPA highlights some of the divisions between East and West over the construction of international refugee law. The first problem with the CPA was that it only related to a certain 'geographic' type of refugee, the Indochinese. This decision suited Asian states; their responsibility for recognising refugees was limited to only

those that the Western states were going to accept. This meant that other refugee populations seeking asylum in Asia would not fall under the same scrutiny. The Biharis, Chakmas, Tamils, Papuans, Indonesian and Timorese for instance, did not receive any international or local assistance in seeking asylum (Zolberg, Suhrke and Aguayo, 1989, p.176).

The second problem with the CPA was that it still restricted refugee status to those who were fleeing future political persecution. It also did not resolve prevent the controversial issue of *non-refoulement* that arose when people feared returning to the Vietnamese Communist state. The communist government in Vietnam was still in place, so how were the Vietnamese different to other populations that wished to leave because of fear of persecution from their state.

With the CPA, the UNHCR congratulated itself on 'achieving such a difficult challenge' (UNHCR. *Information Package on the Comprehensive Plan of Action on Indo-Chinese Refugees*, 1995) – in getting Asian states recognise a right to asylum for people. But, in reality, this was not a challenge. The challenge would have been to have the Asian states recognise asylum seekers and to resettle them in their state; or to have Asian states sign and ratify the 1951 and 1967 international refugee instruments. The CPA enabled Asian states to become a 'processing ground' for

the UNHCR to send people to the West. While the sense of obligation to alleviate the suffering of the Indochinese population can be attributed to the existence of an international norm, the CPA was not a major achievement nor the beginning of Asian states recognising international refugee law as 'customary' or 'universal' (Martin, 1997, p.156).

International refugee law clearly has a long way to go before it can claim to be truly international. As Nietzsche's quote suggests, this means that the 'true' refugee law and practices that we observe as 'international', are just an illusion within the myriad practices and discourses that comprises 'refugeeness'.

## References

- Abrar, Chowdhury, (2001). Legal Protection of Refugees in South Asia. *Forced Migration Review*, 10 pp.21-23.
- Assembly, United Nations, (1949). General. 4th Session Official Records. New York,
- 1950-51. 5th Session Official Records. New York.
- 1967. Addendum to the Report of the United Nations High Commissioner for Refugees. New York: General Assembly Official Records: Twenty-

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- First Session Supplement No.11A (A/6311/Rev.1/Add.1).
- 1965-6. Addendum to the Report of the United Nations High Commissioner for Refugees, pp.iii-38. New York: General Assembly Official Records: Twentieth Session Supplement No.11A (A/6011/Rev.1/Add.1).
- 1949. Official Records of the Fourth Session of the General Assembly. pp.104-50. Lake Success, New York: Third Committee.
- 1966. Report of the United Nations High Commissioner for Refugees. New York: General Assembly Official Records: Twenty-First Session Supplement No.11 (A/6311/Rev.1).
- 1965-66. Report of the United Nations High Commissioner for Refugees. pp.iii-23. New York: General Assembly Official Records: Twentieth Session Supplement No. 11 (A/6011/Rev.1).
- Assembly, United Nations, (1966). General. Official Records of the Third and Fourth Committees. Twenty-First Session. pp.415-47. New York: General Assembly.
- Assembly, United Nations, (1966). General. Addendum to the Report of the United Nations High Commissioner for Refugees. Official Records: Twenty-First Session. Supplement No. 11a (a/6311/Rev.1/Add.1). pp.iii-55. New York: General Assembly Twenty-First Session.
- . Report of the United Nations High Commissioner for Refugees. 1966. Official Records: Twenty-First Session. Supplement No.11 (a/6311/Rev.1) pp.iii-44. New York: General Assembly.
- Athukorala, Prema-Chandra and Chris Manning, (1999). *Structural Change and International Migration in East Asia: Adjusting to Labour Scarcity*. Oxford: Oxford University Press.
- Baral, Lok Raj, (1990). *Regional Migrations, Ethnicity and Security: The South Asian Case*. New Delhi: Sterling Publishers Private Limited.
- Bose, Tapan K., (2000). *Protection of Refugees in South Asia: Need for a Legal Framework*. Kathmandu: South Asia Forum for Human Rights.
- Brettell, Caroline B. and Hollifield, James F. (Ed.). (2000). *Migration Theory: Talking across Disciplines*. New York: Routledge.
- Brown, David, (1994). *The State and Ethnic Politics in Southeast Asia*. London: Routledge.
- Cassese, Antonio, (2001). *International Law*. Oxford: Oxford University Press.
- Castles, Stephen and Alastair Davidson, (2000). *Citizenship and Migration: Globalization and the Politics of Belonging*. London: Macmillan Press.
- Castles, Stephen and Mark J. Miller, (1998). *The Age of Migration: International Population Movements in the Modern World*. London: Macmillan Press Ltd.
- Chimni, B.S. (Ed.), (2000). *International Refugee Law: A Reader*. New Delhi: Sage Publications.
- Crisp, Jeff and Damtew Dessalegne, (2002). *Refugee Protection and Migration Management: The Challenge for UNHCR*. 20. Geneva: Evaluation and Policy Analysis Unit, United Nations High Commissioner for Refugees.
- Cutts, Mark (Principal Author), (2000). *The State of the World's Refugees*. Oxford: Oxford University Press.
- Donkoh, Bemba, (2000). A Half-Century of International Refugee Protection: Who's Responsible, What's Ahead?. *Berkeley Journal of International Law* 18, (2) pp.260-66.
- Donnelly, Jack, (1998). *International Human Rights, Second Edition*. Colorado: Westview Press.
- Forsythe, David P., (2000). *Human Rights in International Relations*. Cambridge: Cambridge University Press.
- Goodwin-Gill, Guy S., (1978). *International Law and the Movement of Persons between States*. Oxford: Clarendon Press.
- 1996 *The Refugee in International Law* (Ed.). Oxford: Clarendon Press.
- Grahl-Madsen, Atle, (1972). *Asylum, Entry and Sojourn*. 2 vols. Vol. 2, *The Status of Refugees in International Law*. Leiden: A. W. Sijthoff.
- 1966. *Refugees Character*. 2 volumes, volume 1, *The Status of Refugees in International Law*. Leyden: A. W. Sijthoff.
- 1980. *Territorial Asylum*. London: Almqvist & Wiksell International
- Hathaway, James C., (1991). *The Law of Refugee Status*. Toronto: Butterworths.
- 1997. *Reconceiving International Refugee Law*. The Hague: Martinus Nijhoff Publishers.
- Holborn, Louise W., (1975). *Refugees: A Problem of Our Time: The Work of the United Nations High Commissioner for Refugees, 1951-1972*. Vol. 1. Metuchen, N.J.: The Scarecrow Press.
- James, Kelley, (1990). Refugee Protection: Whose Responsibility Is It Anyway?. *International Journal of Refugee Law, Special Issue*, pp. 277-82.
- Kondo, Atsushi. 2001. Citizenship Rights for Aliens in Japan. In *Citizenship in a Global World*, Atsushi Kondo (Ed.) New York: Palgrave.
- Kourula, Pirkko, (1997). *Broadening the Edges: Refugee Definition and International Protection Revisited*. The Hague: Martinus Nijhoff Publishers.
- Krieken, Peter J.(Ed), (1999). *Refugee Law in Context: The Exclusion Clause*. The Hague: T.M.C Asser Press.

- Loescher, Gil, (1993). *Beyond Charity: International Cooperation and the Global Refugee Crisis*. New York: Oxford University Press.
- 1999. Refugees: A Global Human Rights and Security Crisis. In Tim Dunne and Nicholas J. Wheeler, (Eds), *Human Rights in Global Politics* (pp. 233-258). Cambridge: Cambridge University Press.
- 2001. The UNHCR and World Politics: State Interests Vs. Institutional Autonomy. *International Migration Review* 35(1), 33.
- Loescher, Gil and Laila Monahan (Eds.), (1989). *Refugees and International Relations*. Oxford: Oxford University Press.
- Marrus, Michael, (1985). *The Unwanted: European Refugees in the Twentieth Century*. New York: Oxford University Press.
- Martin, David A., (Ed.), (1997). *Refugees and Migration*. Cambridge: Cambridge University Press.
- Muntarbhorn, Vitit, (1992). *The Status of Refugees in Asia*. Oxford: Clarendon Press.
- OECD. Organisation for Economic Co-operation and Development, (2001). *International Migration in Asia: Trends and Policies*. Paris: OECD.
- Ong Jin Hui, Chan Kwok Bun and Chew Soon Beng, (Ed.), (1995). *Crossing Borders: Transmigration in Asia Pacific*. New York: Prentice Hall.
- Parnwell, Mike, (1993). *Population Movements and the Third World*. London: Routledge.
- Said, Edward, (1978). *Orientalism: Western Conceptions of the Orient*. London: Penguin Books.
- Schmeidl, Susanne (2001). Conflict and Forced Migration: A Quantitative Review, 1964-1995. In Aristide R. and Peter M. Benda Zolberg (Eds), *Global Migrants, Global Refugees*. New York: Berghahn Books.
- Seth, Sanjay (2000). A 'Postcolonial World'? In Greg Fry and Jacinta O'Hagan (Eds), *Contending Images of World Politics* (pp. 214-226). London: Macmillan Press.
- Shearer, I.A. 1994. *Starke's International Law*. London: Butterworths.
- Siddique, M.A.B. (Ed.), (2001). *International Migration into the 21st Century: Essays in Honour of Reginald Appleyard*. Cheltenham: Edward Elgar.
- Sinha, S. Prakash, (1971). *Asylum and International Law*. The Hague: Martinus Nijhoff Publishers.
- Suhrke, Astri, (1993). The 'High Politics' of Populations Movements: Migration, State and Civil Society in Southeast Asia. In Myron Weiner (Ed.), *International Migration and Security*. Boulder: Westview Press.
- Sztucki, Jerzy. 1989. The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme. *International Journal of Refugee Law* 1(3) pp. 285-318.
- Thakur, Ramesh (Ed.). (1998). *Past Imperfect, Future Uncertain: The United Nations at Fifty*. Houndmills: Macmillan Press.
- Torpey, John (2000). *The Invention of the Passport: Surveillance, Citizenship and the State*. Cambridge: Cambridge University Press.
- Weiner, Myron. Rejected Peoples and Unwanted Migrants in South Asia. In Myron Weiner (Ed.), *International Migration and Security*. Boulder: Westview Press.
- Wong, Diana. 1989. The Semantics of Migration. *Sojourn* 4 (2) pp. 275-85.
- Zolberg, Aristide R. 2001. Citizenship and Migration. Globalization and the Politics of Belonging. *International Migration Review* 35 (4) p.1257.
- Zolberg, Aristide R., and Peter M. Benda. 2001. *Global Migrants, Global Refugees: Problems and Solutions*. New York: Berghahn Books.
- Zolberg, Aristide R., Astri Suhrke and Sergio Aguayo. 1989. *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*. Oxford: Oxford University Press.

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#### Endnotes

<sup>1</sup> The number of refugees in Africa had increased from 310 000 in 1963, to 400 000 at the end of 1964. In addition, the UNHCR in Asia was being asked to assist (materially and socially) Tibetan refugees in India and Nepal, and Chinese refugee in Macao. United Nations General Assembly. Twentieth Session. *Report of the United Nations High Commissioner for Refugees*, Supplement No. 11 (A/6011/Rev.1). New York, 1965, p.7.

<sup>2</sup> The Asian African Legal Consultative Committee (AALCC) adopted a regional agreement, called the Bangkok Principles regarding the status and treatment of refugees in 1966. However, these Principles are non-binding and have not exercised the kind of influence that



other regional refugee treaties have – for instance, the Cartagena Declaration for refugee law in Latin America (Chimni, 2000, p.9).

<sup>3</sup> States not party to the Convention or Protocol include: Afghanistan, Bangladesh, Bhutan, Brunei, Indonesia, India, Iran, Malaysia, Myanmar (Burma), Nepal, Pakistan, South Korea, Sri Lanka, Thailand and Vietnam.

**Lapu Lapu**

(a rubbish dump in Cebu, Philippines)

Children play,  
dancing shadows in a cloud of black poison  
as they embrace with open arms and wide eyes  
the cruel hand that life has dealt.  
Gasping lungs  
Their bodies suck in the toxic fumes,  
not knowing what it's like to breathe pure air;  
or eat before the maggots.  
A fragile existence.  
Generations of human worms scavenge their next meal  
along with the other five thousand residents of Lapu.  
Praying to their stone gods for five loaves and two fish, miracles.  
And as I stand they swarm around me,  
calling: "*Ate\**, *Ate Gretel!*" and throw their arms around me  
laughing; lead me by the hand to show what they have found.  
Well I laugh with them and cry inside  
that I have so much and they have nothing.  
And they treasure their gifts but pity me  
since I could not smile if I had nothing,  
or laugh if hungry.  
For them, the smiles are true, the laughter real  
and in the heart of a rubbish dump, they are rich as kings.

[\* '*Ate*' is a respected term for 'older sister'.]

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